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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 PATRICK WILLIAM BANKS,

No. 2:05-cv-0797-MCE-PAN-P

12 Petitioner,

13 v.

ORDER

14 Mark Shepherd,

15 Respondent.
16 _____/

17 Petitioner, a state prisoner proceeding pro se, has timely
18 filed a notice of appeal of this court's January 5, 2006, denial
19 of his application for a writ of habeas corpus. Before
20 petitioner can appeal this decision, a certificate of
21 appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P.
22 22(b).

23 A certificate of appealability may issue under 28 U.S.C.
24 § 2253 "only if the applicant has made a substantial showing of
25 the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).
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1 The court must either issue a certificate of appealability
2 indicating which issues satisfy the required showing or must
3 state the reasons why such a certificate should not issue. Fed.
4 R. App. P. 22(b).

5 For the reasons set forth in the magistrate judge's November
6 23, 2005, findings and recommendations, petitioner has not made a
7 substantial showing of the denial of a constitutional right.
8 Accordingly, a certificate of appealability should not issue in
9 this action.

10 IT IS SO ORDERED.

11 DATE: February 13, 2006

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14 A handwritten signature in blue ink, appearing to read "Morrison C. England, Jr.", is written over a horizontal line.

15 MORRISON C. ENGLAND, JR.
16 UNITED STATES DISTRICT JUDGE
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